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David L. Meier
Director
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June 17, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF RECORDS

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D. C. 20554

In the Matter of:

DOCKET FILE COPY ORIGINAL

Implementation of Section 34(a)(1) of the
Public Utility Holding Company Act of 1935,
as Added by the Telecommunications Act
of 1996.

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GC Docket No. 96-101

Dear Mr. Caton:

Enclosed are an original and nine copies plus two extra public copies of the Comments of Cincinnati Bell Telephone Company in the above referenced proceeding. A duplicate original copy of this letter and attached Comments is also provided. Please date stamp this as acknowledgment of its receipt and return it. Questions regarding these Comments may be directed to Mrs. Patricia Rupich at the above address or by telephone on (513) 397-6671.

Sincerely,

David L. Meier

David L. Meier

Enclosure

cc: International Transcription Services, Inc.

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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JUN 17 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
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Implementation of Section 34(a)(1)) **GC Docket No. 96-101**
of the Public Utility Holding Company)
Act of 1935, as added by the)
Telecommunications Act of 1996)

COMMENTS OF CINCINNATI BELL TELEPHONE COMPANY

Cincinnati Bell Telephone Company ("CBT"), an independent, mid-size local exchange carrier, submits these comments in response to the Commission's April 25, 1996 Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.¹ The NPRM invites interested parties to comment on proposed regulations to implement new section 34(a)(1) of the Public Utility Holding Company Act of 1935 (the "PUHCA"), as added by section 103 of the Telecommunications Act of 1996 (the "1996 Act").²

Background

New section 34 of the PUHCA allows public utility holding companies to enter the telecommunications industry, without prior approval from the Securities and Exchange Commission ("SEC"), by acquiring or maintaining an interest in an "exempt telecommunications company" ("ETC").³ Under section 34(a)(1), the determination as to whether a company will

¹ Implementation of Section 34(a)(1) of the Public Utility Holding Company Act of 1935, as added by the Telecommunications Act of 1996, GC Docket No. 96-101, Notice of Proposed Rulemaking, released April 25, 1996.

² NPRM at para. 1.

³ See section 34(d) of the PUHCA.

be deemed an ETC must be made by the Federal Communications Commission ("Commission"). In making such determinations, however, the Commission is required to apply the specific statutory criteria of section 34(a)(1). Once ETC status is granted, CBT submits that the ETC should be held to the same standards and regulations as all other providers of local exchange service.⁴

This proceeding was initiated to establish a procedure for handling applications for ETC status filed pursuant to section 34(a)(1). The NPRM proposes a simple procedure for ETC determinations, "under which applicants briefly describe their planned activities and certify that they satisfy the specific statutory requirements and any applicable Commission regulations."⁵ In making this proposal, the Commission states that it believes its responsibilities under section 34(a)(1) are limited to whether the applicant meets the express statutory criteria for ETC status.⁶ As a result, the Commission has concluded that the procedure for handling ETC applications should not involve an inquiry into the public interest merits of entry by the applicant.⁷

Discussion

Although CBT does not dispute that Congress intended to create a streamlined procedure to allow public utility holding companies into the telecommunications business, CBT submits that there is a definite need to address the public interest issues raised by such entry. Section 34(a)(1) simply provides a procedure whereby public utility holding companies are permitted to

⁴ CBT has consistently argued that new entrants should be bound by the same regulatory requirements as incumbent LECs (i.e., regulatory parity).

⁵ NPRM at para. 2.

⁶ Id.

⁷ Id.

enter the telecommunications market without SEC approval. It does not affect the authority of the Commission under the Communications Act or the authority of state commissions under state laws to regulate the activities of entities granted ETC status.⁸ Nor does section 34(a)(1) preclude a public interest inquiry by state and/or federal regulators prior to the Commission's consideration of applications for ETC status. CBT submits that the Commission should allow state regulators to review the public interest issues raised by public utility holding company entry into telecommunications before considering ETC applications.

As the Commission acknowledged in the NPRM, the holding companies are huge corporations with sufficient capital to be effective competitors to incumbent telecommunications companies.⁹ They also have extensive networks in place and access to public rights-of-way. In addition, due to their regulated gas and electric operations, the holding companies will be in a position to subsidize their telecommunications operations through the rates charged to their gas and electric customers unless appropriate safeguards are put in place.¹⁰ Allowing such companies into telecommunications without exploring the likely impact such entry would have on the development of a truly competitive telecommunications marketplace would not serve the public interest.

⁸ See section 34(n) of the PUHCA.

⁹ NPRM at para. 7.

¹⁰ While section 34 of the PUHCA includes some safeguards against cross subsidization, they are not the same as those currently applicable to incumbent LECs. CBT submits that as long as application of the additional accounting safeguards contained in Part 32 and 64 of the Commission's rules is deemed necessary for incumbent LECs, those same rules should be made equally applicable to the holding companies and their ETC affiliates.

At a minimum, CBT recommends that documentation indicating that the appropriate state approvals have been received should accompany the ETC application. This would ensure that the state regulators have had the opportunity to review the activities proposed by the applicant and decide if those activities are in the public interest, particularly as they relate to the ratepayers of the applicant's public utility affiliates. CBT believes the Commission's rejection of calls for prior state approval in previous orders must be reevaluated.¹¹ Although section 34 may not explicitly condition the granting of ETC status on state approval of the proposed activity, it does not preclude the Commission from requiring such approval. Moreover, CBT submits that requiring prior state approval would not impose a significant barrier to entry. By requiring state approval, the Commission could rely on the public interest determinations of the state commissions which are generally in a better position to assess the public interest impacts of entry on their constituents

The NPRM seeks comment on how expansive the Commission's inquiry should be.¹² CBT submits that the answer to this question depends primarily upon whether or not the Commission adopts CBT's recommendation to require state approval prior to considering ETC applications. If the Commission requires evidence of state approval to accompany the application, the Commission need not engage in additional detailed review unless obvious deficiencies or serious problems are brought to light during the comment period recommended by the Commission.¹³ However, if the Commission declines to follow CBT's recommendation,

¹¹ See, for example, Application of Entergy Technology Company for ETC Status, File No. ETC-96-2, Order, released April 12, 1996, at para. 21-28.

¹² NPRM at para. 10.

¹³ NPRM at para. 13.

CBT submits that a more expansive public interest inquiry must be conducted at either the state or federal level before ETC status is granted to a particular applicant. CBT submits that the following public interest issues are among those that must be addressed by federal and/or state regulators:

1. Are the safeguards against cross subsidization contained in section 34 of the PUHCA sufficient to ensure the development of a truly competitive telecommunications marketplace or are additional safeguards necessary?
2. Similarly, are additional safeguards necessary to prevent public utility holding companies from assigning a disproportionate share of the costs of their networks to the gas and electric side of their operations?
3. Should rules similar to those applicable to incumbent LECs be adopted to govern transactions between public utility holding companies and their affiliates?
4. Are rules necessary to ensure that public utility holding companies make their poles, conduits, and rights-of-way available to competing telecommunications service providers at least to the same extent and under the same terms and conditions as is required of incumbent LECs?

Finally, the procedures outlined in the NPRM would require applications for ETC status to be filed with the Commission, the SEC, and affected state commissions. CBT recommends that the Commission also require ETC applications to be filed with the Federal Energy

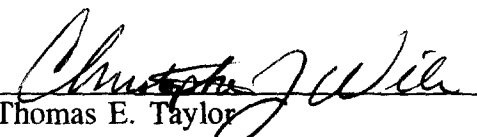
Regulatory Commission (FERC), since the FERC retains certain rate authority under section 34(j).

Conclusion

CBT respectfully requests that the Commission implement procedures to provide for consideration of public interest issues, as identified in these comments, before granting any entity ETC status under section 34(a)(1).

Respectfully submitted,

FROST & JACOBS

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